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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SENORX, INC.,) No. C-07-1075 SC
Plaintiff,)
v.) ORDER DENYING
COUDERT BROTHERS, LLP, and DOES) PLAINTIFF'S MOTION TO
1-500,) REMAND
Defendants.)

)

I. INTRODUCTION

Presently before the Court is a motion by Plaintiff SenoRx, Inc. ("Plaintiff" or "SenoRx") to remand the action to state court. See Mot. to Remand, Docket No. 13. Defendants Coudert Brothers, LLP et al. ("Defendants" or "Coudert") filed an opposition to Plaintiff's motion. See Opp'n, Docket No. 15.

For the reasons discussed herein, the Court DENIES Plaintiff's Motion to Remand.

II. BACKGROUND

In 2001, SenoRx retained the law firm Coudert Brothers LLP to represent it in the filing of several patent applications. See Weiss Decl., Ex. 1. In 2004, Plaintiff sued Defendants in California Superior Court for professional negligence stemming from Defendants' legal advice and actions on behalf of Plaintiff.

1 See Not. of Removal, ¶ 1. From late 2004 through late 2006, the
2 state court litigation continued as Plaintiff filed several
3 amendments to substitute named limited liability partners of
4 Coudert Brothers LLP for the DOE defendants and Defendants filed
5 demurrers. See id. at ¶¶ 2-3.

6 On September 22, 2006, Coudert filed a Chapter 11 Bankruptcy
7 Petition in the United States Bankruptcy Court for the Southern
8 District of New York: In re Coudert Brothers LLP, Case No. 06-
9 12226 (the "Bankruptcy Case"). See id. at ¶ 4. On November 8,
10 2006, Plaintiff filed its Fourth Amended Complaint and the state
11 court subsequently overruled Defendants' demurrer to that
12 complaint. See id. at 5. On January 31, 2007, Plaintiff filed a
13 proof of claim in the Bankruptcy Case seeking the same recovery as
14 the claims set forth in its Fourth Amended Complaint. See id. at
15 6. Defendants removed the action to this Court on February 21,
16 2007. See id.

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18 **III. DISCUSSION**

19 **A. Jurisdiction**

20 This matter was removed to federal court pursuant to 28
21 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy
22 Procedure. Under 28 U.S.C. § 1334(b), which governs federal
23 jurisdiction over bankruptcy matters, "Congress intended to grant
24 comprehensive jurisdiction to the bankruptcy courts so that they
25 might deal efficiently and expeditiously with all matters
26 connected with the bankruptcy estate." Celotex Corp. v. Edwards,
27 514 U.S. 300, 308 (1995). Furthermore, "the 'related to' language

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1 of § 1334(b) must be read to give district courts (and bankruptcy
2 courts under § 157(a)) jurisdiction over more than simple
3 proceedings involving the property of the debtor or the estate."

4 Id.

5 On January 31, 2007, Plaintiff filed a proof of claim in the
6 Bankruptcy Case seeking the same recovery as its claims in this
7 case. See Not. of Removal, ¶ 6. As a result, Plaintiff's claims
8 against Coudert Brothers LLP are core bankruptcy matters which are
9 subject to the jurisdiction of the bankruptcy court. See In re
10 G.I. Industries, 204 F.3d 1276, 1279-80 (9th Cir. 2000) ("The
11 filing of a proof of claim is the prototypical situation involving
12 the 'allowance or disallowance of claims against the estate,' a
13 core proceeding under 28 U.S.C. § 157(b)(2).").

14 In this action, Plaintiff has also filed suit against
15 numerous individuals who were partners of the Coudert law firm
16 (the "Individual Partner Defendants"). The Individual Partner
17 Defendants are not debtors in the Bankruptcy Case. See Pl.'s
18 Reply, 2. In its Reply Brief, Plaintiff concedes that the Court
19 cannot remand the claims against Coudert Brothers LLP, but
20 requests that the Court remand the claims against the Individual
21 Partner Defendants. See id., 1-2.

22 28 U.S.C. § 1452 also allows "removal of claims related to
23 bankruptcy cases." Though not core bankruptcy proceedings, the
24 claims against the Individual Partner Defendants are related to
25 the Bankruptcy Case. The Ninth Circuit has stated:

26 The usual articulation of the test for determining whether a
27 civil proceeding is related to bankruptcy is whether the
outcome of the proceeding could conceivably have any effect

1 on the estate being administered in bankruptcy. [citations
2 omitted]. Thus, the proceeding need not necessarily be
3 against the debtor or against the debtor's property. An
4 action is related to bankruptcy if the outcome could alter
5 the debtor's rights, liabilities, options, or freedom of
6 action (either positively or negatively) and which in any way
7 impacts upon the handling and administration of the bankrupt
8 estate.
9 In re Feitz, 852 F.2d 455, 457 (9th Cir. 1988) (emphasis in
10 original). In this case, Plaintiff's success or failure to
11 recover from the Individual Partner Defendants will either
12 positively or negatively affect the bankruptcy estate. On the one
13 hand, if the Individual Partner Defendants are liable for
14 malpractice and guarantors for damages against Coudert Brothers
15 LLP, claims against the estate will be reduced. On the other
16 hand, a holding of liability will likely give rise to indemnity
17 claims by the partners against the bankruptcy estate, negatively
18 affecting the estate. See In re Sizzler Rests. Int'l, Inc., 262
19 B.R. 811, 818-819 (Bankr. C.D. Cal. 2001) (discussing how
20 indemnity claims give rise to "related to" bankruptcy
21 jurisdiction).

22 **B. Abstention**

23 Plaintiff asserts that the Court should abstain from hearing
24 this case under 28 U.S.C. § 1334(c). See Mot. to Remand, 14.
25 Plaintiff's argument fails. In the Ninth Circuit, abstention is
26 unavailable if there is no pending state court proceeding. See In
27 re Lazar, 237 F.3d 967, 981-82 (9th Cir. 2001) ("Accordingly,
28 because there is no pending state proceeding, §§ 1334(c)(1) and
 1334(c)(2) are simply inapplicable to this case."). As a result
 of Defendant's removal, no pending state proceeding remains and
 abstention does not apply.

1 **C. Equitable Remand**

2 Plaintiff also requests equitable remand of the action
3 pursuant to 28 U.S.C. § 1452(b). See Mot. to Remand, 10. In
4 analyzing whether to remand, the Court should consider a variety
5 of equitable factors, including:

6 (1) the effect of the action on the administration of the
7 bankruptcy estate; (2) the extent to which the issues of
8 state law predominate; (3) the difficulty of applicable state
9 law; (4) comity; (5) the relatedness or remoteness of the
10 action to the bankruptcy case; (6) the existence of a right
11 to jury trial; and (7) prejudice to the party involuntarily
12 removed from state court.

13 Williams v. Shell Oil Co., 169 B.R. 684, 692-693 (S.D. Cal. 1994).
14 A thorough evaluation of the relevant factors weighs in favor of
15 denying equitable remand.

16 **1. Effect of the action on the bankruptcy estate**

17 As previously discussed, the resolution of this case will
18 have a significant effect on the bankruptcy estate. The large
19 amount of money at stake in this litigation has the potential to
20 greatly reduce the bankruptcy estate and constitutes a significant
21 potential liability for the debtor. The estimation of such
22 liabilities is "a mandatory obligation of the bankruptcy court"
23 A.H. Robbins Co. v. Piccinin, 788 F.2d 994, 1012 (4th Cir. 1986).

24 **2. Relatedness of the action to the Bankruptcy Case**

25 As noted by Defendants, this action is related to the
26 Bankruptcy Case. First, Coudert Brothers LLP is the debtor in the
27 Bankruptcy Case and Plaintiff filed a proof of claim in that case

1 concerning the same transactions as this case. Second, the
2 Individual Partner Defendants were allegedly members of the firm
3 at the time it did legal work for Plaintiff and have been named as
4 guarantors of the firm's liabilities. As such, any action against
5 the Individual Partner Defendants will necessarily inquire into
6 the liability of Coudert, the debtor, and whether its insurance is
7 sufficient to cover Plaintiff's claims. Plaintiff's claims
8 against the non-debtor partners are thus inextricably linked to
9 its claims against the debtor.

10 **3. Issues of state law**

11 Plaintiff's case involves relatively straightforward state
12 law claims of legal malpractice. In support of its motion to
13 remand, Plaintiff argues that the trial court will need to
14 interpret California Corporations Code § 16956, which regulates
15 the amount of insurance a limited liability partnership must hold.
16 See Mot. to Remand, 11. Despite the presence of state law claims
17 and the need to interpret a state statute, bankruptcy courts are
18 capable of resolving issues of state law, as the court will be
19 able to do in this case. See In the Matter of Chicago, Milwaukee,
20 St. Paul & Pacific R.R. Co., 6 F.3d 1184 (7th Cir. 1993) (stating
21 that bankruptcy courts are qualified to resolve issues of state
22 law).

23 **4. Comity**

24 Comity does not favor remand in this case. Though the case
25 was before the state court for some time, the court had not made
26 significant progress. Indeed, it was not until January 2007 that
27 the demurrer to Plaintiff's Fourth Amended Complaint was

1 overruled. See Not. of Removal, ¶ 5; see e.g., In re Talon
2 Holdings, Inc., 221 B.R. 214, 221 (Bankr. N.D. Ill. 1998) ("[A]t
3 the time this action was removed, the proceedings in the State
4 Court were not sufficiently advanced such that concerns for comity
5 and waste of judicial resources are implicated.")

6 **5. Other factors**

7 Consideration of the remaining factors weighs against remand.
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9 **IV. CONCLUSION**

10 For the reasons described herein, Plaintiff's Motion to
11 Remand is DENIED.

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13 IT IS SO ORDERED.

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15 Dated: May 24, 2007



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UNITED STATES DISTRICT JUDGE